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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,031	08/04/2003	Peter L. Cassidy Phillips	1060A	5285

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EXAMINER

PHAM, HUONG Q

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,031

Applicant(s)

PHILLIPS, PETER L. CASSIDY

Examiner

Huong Q. Pham

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/4/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7 -8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosmano (5,830,161).

Cosmano teaches every claimed feature of claims 1-4, 7-8 including a generally elongated massage body having at least one resilient layer 18 (figure 3) , spaced apart wheels 30. As for claims 2, 4, note the elastic layer 18, and compressive layer 52. As for claims 3, 8, note core 28. As for claim 7, note that the compressive layer 52 is elastic and the material is capable of being used as an " elastic bandage".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmano (5,830,161) in view of Yamakawa et al (6,784,127) .

Yamakawa et al teaches an elastic material comprises a non-woven fabric contains polyurethane elastomer fibers. In view of this teaching of Yamakawa et al, it would have been obvious to one ordinary skill in the art at the time the invention was made to substitute the elastic layer 18 of Cosmano with an elastic material comprises a non-woven material and a plurality of elastic fibers in the non-woven material in order to provide the desired massaging effect. The substitution of one elastic material for another well known elastic material is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art.

Claims 11, 15 - 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmano (5,830,161) in view of Douglas (3,298,687) .

Note the comments above for the teaching of Cosmano. Douglas teaches a roller capable of being used as a massaging device having a substantially rigid core 3 and a plurality of elastic layers 20, 21, 33, 34 (figures 1, 4 -6), at least one compressive layer 20, 34. In view of this teaching of Douglas, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the massaging device of Cosmano with a substantially rigid core with a plurality of elastic layers, and at least one compressive layer for the desired massaging or rolling effect. As for claim 15, note the

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rigid core 3 (figure 1) , the inner elastic layer 20, the compressive layer 21, the outer elastic layer 33, 34 (figure 6) of Douglas. As for claim 16, note the cover 34 of Douglas.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmano (5,830,161) in view of Douglas (3,298,687), and further in view of Schlagel (5,346,449).

Note the comments above for the teachings of Cosmano and Douglas. Schlagel teaches a device with bolts engaging wheels 14 and core 9 for securing the wheels 14 to the body 22 (figure 2, note that the body 22 is capable of performing massage when contacting a user). In view of this teaching of Schlagel, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the massaging device of Cosmano with bolts engaging wheels 30 and core 28 in order to secure the wheels 30 to the massaging body . As for claim 19, note the bore and bolt coupling 24 of Schlagel.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmano (5,830,161) in view of Yamakawa et al (6,784,127) and Douglas (3,298,687) .

Note the comments above for the teachings of Cosmano (5,830,161), Yamakawa et al (6,784,127) and Douglas (3,298,687) .

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmano (5,830,161) in view of Yamakawa et al (6,784,127) and Douglas (3,298,687) and Schlager (5,346,449) .

Note the comments above for the teachings of Cosmano (5,830,161) , Yamakawa et al (6,784,127) , Douglas (3,298,687) and Schlager (5,346,449) .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 7:15 AM - 3:45 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272 - 4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



March 31, 2006

MICHAEL A. BROWN
PRIMARY EXAMINER